

States has forsworn torture in Guantanamo, he has said to the world: We are telling you this is a different day. It is a new day. For those who are not convinced in terrorism and extremism, at least understand that America is now ready to deal with you in an honest way, in a different way. What message does it send if the Congress turns around and says to the President: No, you can't say that to the Islamic world. We are going to keep Guantanamo open. We are going to keep this open, even if it is an irritant.

Don't take my word for it because I am not an expert in this field but those who are, many of them, believe Guantanamo should be closed. I would never question the sincerity or the resume of GEN Colin Powell, who has said close Guantanamo; GEN David Petraeus: Close Guantanamo; the Secretary of Defense: Close Guantanamo; President George W. Bush: Close Guantanamo.

All of these people who have seen the intelligence and have the background believe it is time to close that facility. This President is trying to make good on that promise by President Bush and turn the page when it comes to Guantanamo and its future. I think that is critical to bringing about a more peaceful world and reaching out and saying to this world: Things have changed.

I bet the Senator from Arizona joined me when we went upstairs to 407 and saw the photographs from Abu Ghraib. It is a moment none of us will ever forget as long as we live. Some of the things we saw there were gut-wrenching. I stood there with my colleagues, women and men, embarrassed at the things I looked at.

Some of those images are going to be with us for a long time, images that the people of the world have seen. We have to overcome them by saying it is a new day, and the clearest way to do that is to close Guantanamo in an orderly way, not to release any terrorists in the United States. On the question about whether we can incarcerate them—even if our prison population is as large as it is, there are facilities available. Once this President is given this option to reach out to States and this Nation, I am confident he will find accommodations in Federal prisons and supermax State prisons to deal with 240 people who are now left at Guantanamo. I think that is something we can expect to happen, and it will happen.

I will close by saying this: I asked the Senator from Kentucky twice if he would comment on what I heard to be his statement about whether this gentleman, Ahmed Ghailani, if found not guilty, would be released into the United States. He said Mr. Gibbs, the White House Press Secretary, had led him to that conclusion. I think, in fairness, Mr. Gibbs would say, clearly, he had no intention that this President or anyone in this administration would ever release this man, and there is no right under the law that he be released, even if he is found not guilty, into the

U.S. population. It is not going to happen. I think raising that specter, raising that question, is raising that level of fear.

I do not think fear should guide us. America is not a strong nation cowering in the shadows in fear. America is a strong nation when we realize our challenge, stand together united, don't abandon our principles, and use the resources we have around the world to make certain we are safer.

The last point I will make is I have the greatest confidence in our system of justice, more than any in the world. I hope all my colleagues will have that same sense of confidence, that if the President sends a case to our courts of law, it will be handled professionally and fairly in the best possible manner.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I have enjoyed this debate between these two great Senators. It is an interesting debate. I come down on the fact, if they are moved into any of our facilities in this country—and there are very few that could take them; in fact, I do not know of any that can take them that are not overcrowded right now—there will be the same screaming and shouting because they will not be treated anywhere near as well as they are treated down there at Guantanamo. No matter what we do that new day is not going to be a very happy day. It is far better to have this \$200 million state-of-the-art facility that has been approved by international organizations as being better than expected, better than average facilities that would be acceptable—it is better to acknowledge that and keep treating them as decently and with as much dignity as we can, which is more than they will get in a supermax facility in this country or any other facility.

The supermax facilities are loaded with prisoners. They have more than they can handle now. Why would we put terrorists in among them, and why would we put them in this country where they can influence other people who are dissatisfied with life and have been discontented and have committed very serious crimes and allow them the recruitment possibilities they would have in our country? It doesn't make sense.

Why would we blow \$200 million on state-of-the-art facilities and then spend another \$80 million to shut it down? It seems like it is going a little bit too far because of the attempt of this administration to please, basically, people who support terrorists and the rest of the world.

Admittedly, there have been some outstanding people in our country who have come to the conclusion they should shut Guantanamo down, but they did so without having a real, viable alternative to Guantanamo. That is the issue that bothers me. I don't know of any State in the Union that wants these people within their prison sys-

tem, assuming they could handle them. It means a lot more expense, a lot more problems. It means the possibility that they will be recruiting terrorists and helping criminals to become terrorists in our country. I can't begin to tell you the cost to this society if we do that. Be that as it may, the President seems to want to do that in spite of the fact that overwhelmingly the American people don't want him to do that.

STATE SECRETS PROTECTION ACT

Mr. HATCH. Mr. President, I rise today to express my reservations regarding the State Secrets Protection Act. Since one of the purposes of government is to provide a strong national defense, there are methods and sources that should never be disclosed for fear of irreparable damage to national security. The judicial branch has a long-documented history in addressing the state secrets privilege. Through the years, courts have affirmed time and again the privilege of the government to withhold information that would damage national security programs.

The modern origin of this doctrine was established in *United States v. Reynolds*. The Supreme Court created the Reynolds compromise, which stated that the privilege applies when the court is satisfied "from all circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged." That is what the Supreme Court has held, and it has continued to affirm this position with the utmost deference to the executive branch. Under Reynolds, the state secrets privilege cannot—and has not—been lightly invoked. The pending bill before the Judiciary Committee, known as the State Secrets Protection Act, would negate the Reynolds compromise and create a higher standard of proof for the government to assert the privilege.

My analysis of the legislation before us leads me to conclude that this bill will bring chaos to the balance struck by Reynolds. This bill lowers the deference that courts give to the executive branch in its assertion of the state secrets privilege. It raises the burden of proof that the government must meet to protect state secrets. The courts have built great flexibility into the state secrets doctrine to allow themselves the latitude to reach an effective compromise between the rights of litigants and the needs of national security. This is conducted on a case-by-case basis.

The writers of this bill want to redefine the standard to only afford protection under the state secrets privilege only when the disclosure of evidence is "reasonably likely to cause significant harm" to national security. This is a serious departure from the long established precedent of Reynolds. This has ramifications that would severely impede the protection of national security secrets. It is preposterous to abandon a standard that has more than 55